

2004-12411
Recorded at the request of
KATHY BUTCHER
06/04/2004 12:44P
Fee: 43.00 No of Pages: 13

Recording Requested By:

Berglund Family Vineyards, a California Limited Partnership,
WSA Finance Co., General Manager

OFFICIAL RECORDS
Marsha A Wharff, Clerk-Recorder
Mendocino County, CA

RWQCB
REGION I

When Recorded, Mail To:

Catherine E. Kuhlman, Executive Officer
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd, Suite A
Santa Rosa, CA 95403

2004 JUN 21 2004
☐ CK ☐ FCR ☐ KAD
☒ RLT ☐ LGR ☐ EUL
☐ NPO ☐ RSG

CSA

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

1600 South Main Street, Willits, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 4 day of June, 2004 by Berglund Family Vineyards, a California Limited Partnership, WSA Finance Co., General Manager ("Covenantor") who is the Owner of record of that certain property situated at 1600 South Main Street, in the City of Willits, County of Mendocino, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"), for the benefit of the California Regional Water Quality Control Board for the North Coast Region (the "Board"), with reference to the following facts:

A. Portions, described in Exhibit B attached hereto and incorporated herein by this reference (such portions hereinafter referred to as the "Restricted Area"), of the Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Property. Soil at the Property was contaminated by petroleum storage and use conducted by Berglund Tractor & Equipment Supply Company. These operations resulted in contamination of soil and groundwater with organic chemicals including petroleum hydrocarbons, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Approximately 3000 cubic yards of contaminated soil were excavated and treated.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Restricted Area of the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via in-place contact resulting in dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Property is used for commercial purposes and is adjacent to commercial and residential land uses.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Property has been made and extensive sampling of the Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Restricted Area of the Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that have been or may have been deposited on portions of the Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Restricted Area of the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Restricted Area of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Restricted Area of the Property unless expressly stated as applicable to a specific portion of the Restricted Area of the Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Restricted Area of the Property shall be deemed by their purchase, leasing, or possession of such Restricted Area of the Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Restricted Area of the Property and that the interest of the Owners and Occupants of the Restricted Area of the Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Restricted Area of the Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights,

which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the North Coast Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Restricted Area of the Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Restricted Area of the Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Restricted Area of the Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Restricted Area of the Property as follows:

- a. No Owners or Occupants of the Restricted Area of the Property or any portion thereof shall conduct any excavation work exceeding four feet total depth on the Restricted Area of the Property, unless expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law.
- b. No Owners or Occupants of the Restricted Area of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.
- c. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Restricted Area of the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- d. No Owner or Occupant of the Restricted Area of the Property shall act in any manner that



will aggravate or contribute to the existing environmental conditions of the Restricted Area of the Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the Restricted Area of the Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of June 4, 2004, and recorded on June 4, 2004, in the Official Records of Mendocino County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Restricted Area of the Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Restricted Area of the Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Restricted Area of the Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

Berglund Family Vineyards, a California Limited Partnership,
WSA Finance Co., General Manager
Attention: William R. Berglund, President
P.O. Box 2089
Napa, CA 94559

If To: "Board"

Regional Water Quality Control Board
North Coast Region
Attention: Executive Officer
5550 Skylane Blvd, Suite A
Santa Rosa, California 95403

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Mendocino within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.



IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

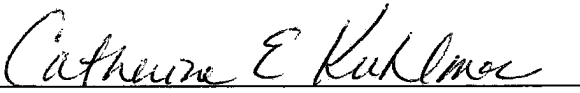
Covenantor: Berglund Family Vineyards, a California Limited Partnership,
WSA Finance Co., General Manager

By: 
William R. Berglund

Title: President

Date: 5-21-04

Agency: State of California
Regional Water Quality Control Board,
North Coast Region

By: 
Catherine E. Kuhlman

Title: Executive Officer

Date: 6/3/04



State of California)

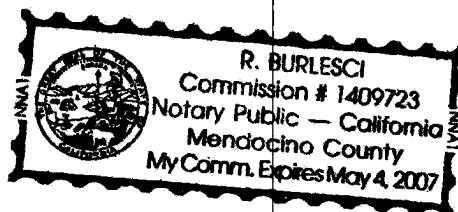
County of Mendocino)

On 5/21/04 before me, R. Burlesci,
personally appeared William R. Berglund

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature R. Burlesci



State of California)

County of SONOMA)

On JUNE 3, 2004 before me, ALLEN D COFFIN, NOTARY PUBLIC,
personally appeared CATHERINE E KUHLMAN

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Allen D. Coffin

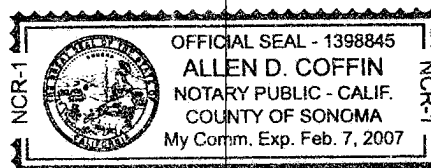


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY



Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

✓ BERGLUND FAMILY VINEYARDS
P.O. Box 2089
Napa, CA 94558

011871

RECORDED AT REQUEST OF
AS SHOWN

BOOK 2182 PAGE 257
94 JUN 13 PM 12:26

OFFICIAL RECORDS
MENDOCINO COUNTY CALIF.
MARSHA A. YOUNG
RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

BERGLUND FAMILY VINEYARDS
P.O. Box 2089
Napa, CA 94558

	\$20.00 PAID
X	PCO FILED
	Exempt

The undersigned grantor(s) declare(s):

CITY TRANSFER TAX IS: \$
DOCUMENTARY TRANSFER TAX IS: \$ 299.20
SURVEY MONUMENT PRESERVATION FUND IS: \$
..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

A. P. # _____

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Berglund Inc., a California corporation

hereby GRANT(S) to

Berglund Family Vineyards, a California limited partnership

the real property in the City of Willits
County of Mendocino

, State of California, described as:

designated as Assessor Parcel Number: 007-130-04.

See Exhibit "A" attached hereto and made a part hereof for complete
legal description.

Dated March 31, 1994

Berglund Inc., a California corporation

STATE OF CALIFORNIA
COUNTY OF Solano

On May 11, 1994 before me,

the undersigned

personally appeared William R.

Berglund

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowl-
edged to me that he/she/they executed the same in his/
her/their authorized capacity(ies), and that by his/her/
their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the
instrument.

By: William R. Berglund
William R. Berglund, President



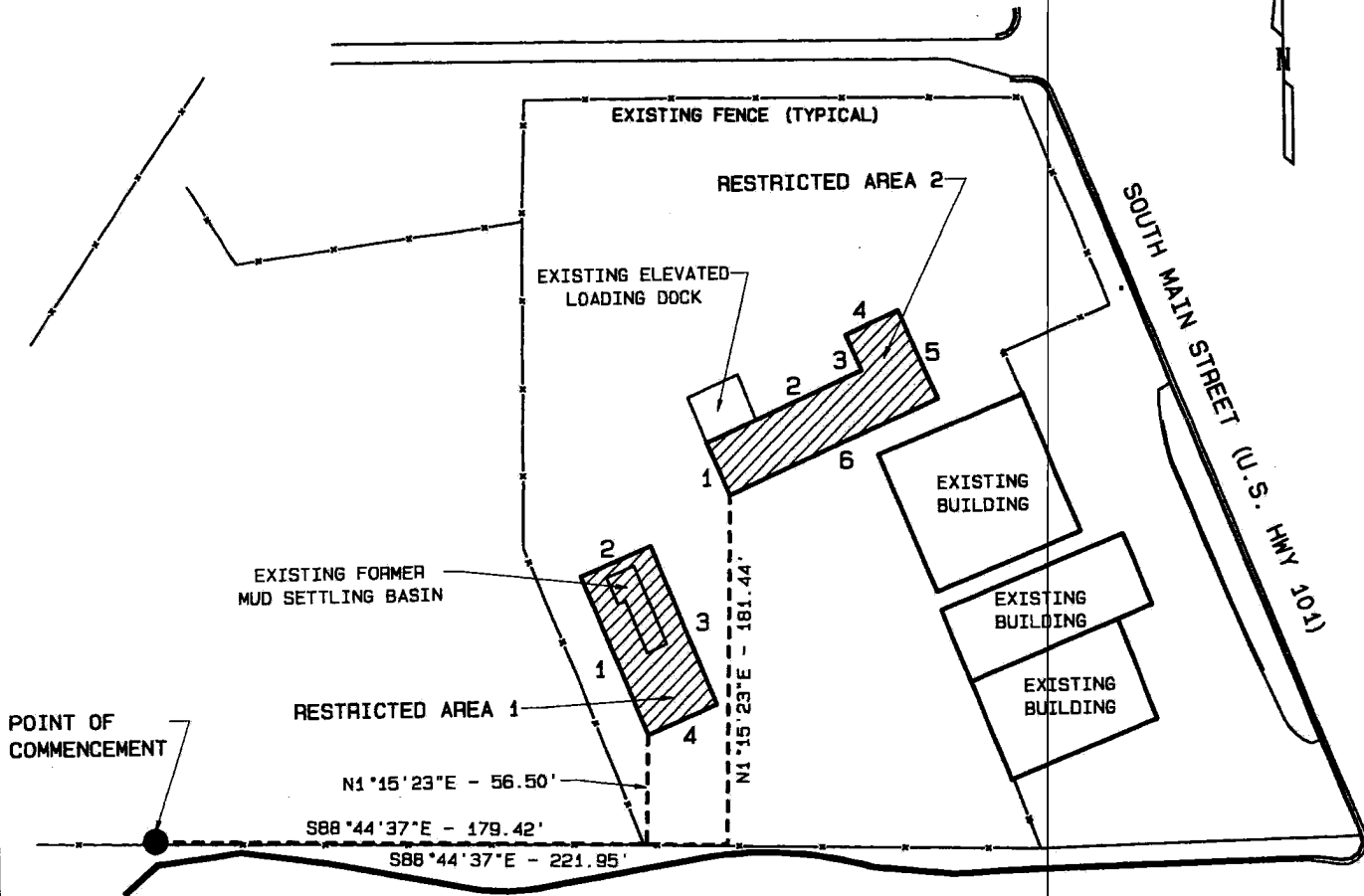
WITNESS my hand and official seal.

Signature

McGinn

MAIL TAX STATEMENTS AS DIRECTED ABOVE

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- RESTRICTED AREA 1**
COURSES AND DISTANCES
1. N22°35'19"W - 90.00'
 2. N67°24'41"E - 40.00'
 3. S22°35'19"E - 90.00'
 4. S67°24'41"W - 40.00'

- RESTRICTED AREA 2**
COURSES AND DISTANCES
1. N23°51'25"W - 30.00'
 2. N66°08'35"E - 90.00'
 3. N23°51'25"W - 20.00'
 4. N66°08'35"E - 30.00'
 5. S23°51'25"E - 50.00'
 6. S66°08'35"W - 120.00'

PREPARED BY

SHN CONSULTING ENGINEERS & GEOLOGISTS, INC.
SURVEYING, ENGINEERING AND PLANNING SERVICES
P. O. BOX 38 - 493 SOUTH MAIN STREET
WILLITS, CALIFORNIA 95490
(707) 459-4518 FAX (707) 459-1884



EXHIBIT "B"

SEE DESCRIPTIONS OF RESTRICTED AREA 1 AND 2 ATTACHED HERETO

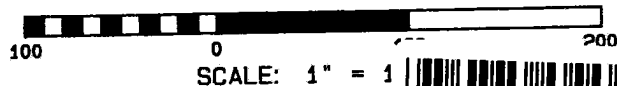


Exhibit B

All that certain real property situated in the County of Mendocino, State of California, more particularly described as follows:

Restricted Area 1

Commencing at a ¾" iron pipe marked RCE 17796 marking the Northwest corner of Parcel 1 as shown on a map filed in Map Case 2, Drawer 35, Page 85, Mendocino County Records; thence along the North line of said parcel South 88°44'37" East, 221.95 feet; thence at a right angle to said North line North 1°15'23" East, 181.44 feet to the POINT OF BEGINNING of this description; thence North 23°51'25" West, 30.00 feet; thence at a right angle North 66°08'35" East, 90.00 feet; thence at a right angle North 23°51'25" West, 20.00 feet; thence at a right angle North 66°08'35" East, 30.00 feet; thence at a right angle South 23°51'25" East, 50.00 feet; thence at a right angle South 66°08'35" West, 120.000 feet to the Point of Beginning and the end of this description.

Restricted Area 2

Commencing at a ¾" iron pipe marked RCE 17796 marking the Northwest corner of Parcel 1 as shown on a map filed in Map Case 2, Drawer 35, Page 85, Mendocino County Records; thence along the North line of said parcel South 88°44'37" East, 179.42 feet; thence at a right angle to said North line North 1°15'23" East, 56.50 feet to the POINT OF BEGINNING of this description; thence North 22°35'19" West, 90.00 feet; thence at a right angle North 67°24'41" East, 40.00 feet; thence at a right angle South 22°35'19" East, 90.00 feet; thence at a right angle South 67°24'41" West, 40.00 feet Point of Beginning and the end of this description.

See Plat of Restricted Area 1 and 2 attached hereto.

Thomas M. Herman

Thomas M. Herman, P.L.S. 4805
License Expires 9-30-04

